

AMENDED IN SENATE MAY 13, 2014  
AMENDED IN ASSEMBLY MARCH 19, 2014  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1775**

---

**Introduced by Assembly Member Melendez**

February 18, 2014

---

An act to amend Section 11165.1 of the Penal Code, relating to child abuse.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1775, as amended, Melendez. Child Abuse and Neglect Reporting Act: sexual abuse.

Existing law, the Child Abuse and Neglect Reporting Act, defines sexual abuse as sexual assault or sexual exploitation for purposes of mandating certain persons to report suspected cases of child abuse or neglect. Under the act, sexual exploitation refers to, among other things, a person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, a film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except as specified. Failure to report known or suspected instances of child abuse, including sexual abuse, under the act is a misdemeanor.

This bill would provide that sexual exploitation also includes a person who knowingly ~~downloads~~ *downloads, streams, or accesses through any electronic or digital media*, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct. Because the bill would expand the scope of a crime and impose additional duties on local officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 11165.1 of the Penal Code is amended  
2 to read:

3     11165.1. As used in this article, “sexual abuse” means sexual  
4 assault or sexual exploitation as defined by the following:

5     (a) “Sexual assault” means conduct in violation of one or more  
6 of the following sections: Section 261 (rape), subdivision (d) of  
7 Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest),  
8 286 (sodomy), subdivision (a) or (b), or paragraph (1) of  
9 subdivision (c) of Section 288 (lewd or lascivious acts upon a  
10 child), 288a (oral copulation), 289 (sexual penetration), or 647.6  
11 (child molestation).

12     (b) Conduct described as “sexual assault” includes, but is not  
13 limited to, all of the following:

14     (1) Penetration, however slight, of the vagina or anal opening  
15 of one person by the penis of another person, whether or not there  
16 is the emission of semen.

17     (2) Sexual contact between the genitals or anal opening of one  
18 person and the mouth or tongue of another person.

19     (3) Intrusion by one person into the genitals or anal opening of  
20 another person, including the use of an object for this purpose,  
21 except that, it does not include acts performed for a valid medical  
22 purpose.

23     (4) The intentional touching of the genitals or intimate parts,  
24 including the breasts, genital area, groin, inner thighs, and buttocks,  
25 or the clothing covering them, of a child, or of the perpetrator by  
26 a child, for purposes of sexual arousal or gratification, except that

1 it does not include acts which may reasonably be construed to be  
2 normal caretaker responsibilities; interactions with, or  
3 demonstrations of affection for, the child; or acts performed for a  
4 valid medical purpose.

5 (5) The intentional masturbation of the perpetrator's genitals in  
6 the presence of a child.

7 (c) "Sexual exploitation" refers to any of the following:

8 (1) Conduct involving matter depicting a minor engaged in  
9 obscene acts in violation of Section 311.2 (preparing, selling, or  
10 distributing obscene matter) or subdivision (a) of Section 311.4  
11 (employment of minor to perform obscene acts).

12 (2) A person who knowingly promotes, aids, or assists, employs,  
13 uses, persuades, induces, or coerces a child, or a person responsible  
14 for a child's welfare, who knowingly permits or encourages a child  
15 to engage in, or assist others to engage in, prostitution or a live  
16 performance involving obscene sexual conduct, or to either pose  
17 or model alone or with others for purposes of preparing a film,  
18 photograph, negative, slide, drawing, painting, or other pictorial  
19 depiction, involving obscene sexual conduct. For the purpose of  
20 this section, "person responsible for a child's welfare" means a  
21 parent, guardian, foster parent, or a licensed administrator or  
22 employee of a public or private residential home, residential school,  
23 or other residential institution.

24 (3) A person who depicts a child in, or who knowingly develops,  
25 duplicates, prints, downloads, *streams*, *accesses through any*  
26 *electronic or digital media*, or exchanges, a film, photograph,  
27 videotape, video recording, negative, or slide in which a child is  
28 engaged in an act of obscene sexual conduct, except for those  
29 activities by law enforcement and prosecution agencies and other  
30 persons described in subdivisions (c) and (e) of Section 311.3.

31 SEC. 2. No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution for certain  
33 costs that may be incurred by a local agency or school district  
34 because, in that regard, this act creates a new crime or infraction,  
35 eliminates a crime or infraction, or changes the penalty for a crime  
36 or infraction, within the meaning of Section 17556 of the  
37 Government Code, or changes the definition of a crime within the  
38 meaning of Section 6 of Article XIII B of the California  
39 Constitution.

1     However, if the Commission on State Mandates determines that  
2     this act contains other costs mandated by the state, reimbursement  
3     to local agencies and school districts for those costs shall be made  
4     pursuant to Part 7 (commencing with Section 17500) of Division  
5     4 of Title 2 of the Government Code.

O